



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

U.S. Election Assistance Commission
Funding Advisory Opinion
FAO-08-007

Requestors:

Ohio (AOR-08-005 and AOR-08-006)

Rhode Island (AOR-08-012)

Questions:

1. Are grantees or subgrantees of federal grant monies subject to any federal reporting/accounting regulations if the grantee or subgrantee destroys voting machines purchased with federal grant money because the machines were damaged and no longer functional for their intended purpose or otherwise disposes of equipment purchased with federal funds?
2. May grantees or subgrantees determine to discontinue use of voting machines purchased with federal money because the grantee or subgrantee determines the machines are not safe for their intended use?

Determination:

1. Grantees and subgrantees are subject to the federal administrative requirements contained in the “Common Rule” (formerly Office of Management and Budget Circular (OMB) A-102) for the use of Federal grant monies.¹ These requirements include provisions governing the accounting of, use, and disposition of equipment purchased with Federal funds.

Regarding equipment, the Common Rule (41 CFR 105-71.132) says that states “will use, manage, and dispose of equipment acquired under a grant by the state in accordance with State laws and procedures.” Thus, states must follow applicable state requirements when disposing of equipment that is damaged or no longer functional.

Subpart 132 also stipulates that “other grantees and subgrantees will follow paragraphs (c) through (e) of this section.”

The Common Rule requirements for disposition of equipment purchased with Federal funds by grantees (other than states) and subgrantees follow:

¹ The General Services Administration and the Election Assistance Commission informed States upon the award of Help America Vote Act funds that the funds were subject to the requirements contained in the “Common Rule.” The Common Rule contains the uniform administrative requirements for grants and cooperative agreements with states and local governments. As EAC has not yet published the Common Rule in the Code of Federal Regulations (CFR), it refers states to 41 CFR Part 105-71, which contains GSA’s publication of the Common Rule. The document is referred to as the Common Rule because all Federal agencies use the same, or common, administrative requirements that were contained in OMB Circular A-102.

Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

- (1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
- (2) Items of equipment with a current per unit fair market value of \$5,000 or more may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment. For example, assume that a county sold voting equipment for \$40,000 that was purchased with 25 percent county funds and 75 percent HAVA funds. Revenue from the sale of \$30,000 (75 percent times \$40,000) would have to be reserved for use on HAVA programs and \$10,000 (25 percent times \$40,000) could be disposed of at the discretion of the county.
- (3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions. For example, assume that a county had purchased voting equipment with HAVA funds of \$100,000 in fiscal year 2005 and in 2009 replaced its voting equipment (either with HAVA, State, or county funds or a combination thereof) and placed its old equipment in storage. EAC could direct the county to sell the stored equipment purchase with HAVA funds and return the revenue from the sale to the State for deposit into the State Election Fund.

For purposes of applying the disposition of equipment standards to voting equipment and equipment purchased to support a computerized statewide voter registration list, EAC has determined that:

- (a) Individual voting machines and supporting equipment should be valued collectively as a voting system and not on the basis of the value of each item of equipment. For example, if a state bought 5,000 voting machines at a cost of \$4,000 per unit, the acquisition costs of \$20 million would be used to determine market value for purposes of disposition. Similarly, if a county purchased 25 voting machines at a cost of \$5,000 per unit, the acquisition cost of \$125,000 would be used to determine market value.
- (b) Components (such as laptops, printers, and servers) that support a voter registration list should also be valued collectively as a computer system and not on the basis of the value of each component.

In summary, individual items of equipment which are part of a voting system, such as a ballot reader or a voting machine, or part of the system that supports a statewide voter registration list, such as a printer or computer, may not be sold

off as individual items of equipment with a market value of under \$5,000 “with no further obligation to the awarding agency” because the items must be viewed as part of a system.

This is consistent with the Help America Vote Act (HAVA) definition of voting systems and Office of Management and Budget Circular A-130, *Management of Federal Information Resources*, definition of information technology system.

Section 301(b) of HAVA defines voting system as:

- (1) The total combination of mechanical, electromechanical, or electronic equipment (including software, firmware, and documentation required to program, control, and support the equipment) that is used—
 - (A) to define ballots;
 - (B) to cast and count votes;
 - (C) to report or display election results; and
 - (D) to maintain and produce any audit trail information; and
- (2) the practices and associated documentation used—
 - (A) to identify system components and versions of such components;
 - (B) to test the system during its development and maintenance;
 - (C) to maintain records of system errors and defects;
 - (D) to determine specific system changes to be made of a system after the initial qualification of the system; and
 - (E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

OMB Circular A-130 says that information technology systems would include computers, ancillary equipment, software, firmware and similar procedures, services, (including support services), and related resources organized for the collection, processing, maintenance, transmission, and dissemination of information.

Finally, keep in mind that the Help America Vote Act (HAVA) and the Common Rule require the maintenance of records consistent with sound accounting principles, that disclose the disposition of Federal funds, and that facilitate an audit. Also, the Common Rule requires that equipment purchased with Federal funds must be adequately safeguarded. Consequently, if equipment financed with HAVA funds is damaged, the State or subgrantee must have records that disclose the circumstances under which the equipment was damaged so that liability for the damage may be established. For example, if inadequate storage resulted in the damage, the state would be responsible for replacing the equipment. In addition, if equipment is determined to be no longer functional, the state or subgrantee must have records to substantiate the determination.

2. States or subgrantees may determine to discontinue use of voting machines purchased with federal money if the machines are not safe for their intended use. As with damaged equipment or equipment judged to be no longer functional, a state or subgrantee must keep records to adequately justify the determination that the equipment is unsafe.